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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 DENO MILANO,

12 Plaintiff,

13 vs.

14 INTERSTATE BATTERY SYSTEM OF  
15 AMERICA, INC.; INTERSTATE BATTERY  
16 SYSTEM INTERNATIONAL, INC.,

17 Defendants.

Case No. 10-CV-2125-CW

**~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF AMENDED  
CLASS SETTLEMENT**

1           The Parties to this Litigation have entered into an Amended Class Action Settlement  
2 Agreement, as of February 16, 2012 (“Amended Settlement Agreement”), which if approved, would  
3 fully resolve this action. Plaintiff filed a Motion for Preliminary Approval of the Amended Settlement  
4 Agreement, and Defendants filed a separate brief asking the Court to grant preliminary approval and to  
5 order the relief requested in Plaintiff’s motion. Where not otherwise defined, all capitalized terms in  
6 this Order shall have the same meaning as set forth in the Amended Settlement Agreement. The Court  
7 has read and considered the motion papers and the Amended Settlement Agreement and all Exhibits  
8 thereto and finds there is sufficient basis to (1) preliminarily approve the Amended Settlement  
9 Agreement and the accompanying Exhibits, (2) confirm that the Parties have agreed that the Amended  
10 Settlement Agreement supersedes the Original Settlement Agreement signed as of October 26, 2011,  
11 (3) certify a conditional Settlement Class under Federal Rule of Civil Procedure 23(b)(2) composed of  
12 the Settlement Class Members, as defined in the Amended Settlement Agreement, (4) reconfirm the  
13 appointment of Girard Gibbs as Class Counsel and Named Plaintiff Deno Milano as Class  
14 Representative for the new Settlement Class as defined in the Amended Settlement Agreement, (5)  
15 approve the proposed New Long-Form Settlement Notice to the Settlement Class and New CAFA  
16 Notice to governmental officials, in forms substantially similar to those attached as Exhibits A-B to the  
17 Amended Settlement Agreement, (6) reconfirm the appointment of Jennifer Keough and the Garden  
18 City Group as the Settlement Administrator for the proposed settlement contained in the Amended  
19 Settlement Agreement, (7) order that this New Preliminary Approval Order supersedes entirely the  
20 Court’s earlier Order, dated December 1, 2011, preliminarily approving the Original Settlement  
21 Agreement, and (8) set a hearing at which the Court will consider whether to grant final approval of the  
22 Amended Settlement Agreement.

23           The Court now GRANTS the Motion for Preliminary Approval and makes the following  
24 findings and orders:

25           1.       The Court certifies, for settlement purposes only, the following Settlement Class  
26 pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure:

27           All original purchasers of an Interstate Batteries trademarked battery (meaning the  
28 Interstate Batteries, Nationwide, Power Volt, and Quickstart brands) that was covered by  
a Previous Interstate Batteries’ Pro-Rata Warranty and that was purchased from an

1 Interstate Batteries authorized dealer (but not from an All Battery Center Store), in the  
 2 United States or the District of Columbia, at any time from April 19, 2000 through April  
 30, 2012, and who:

3 (i) later presented that original battery, during the applicable pro-rata-warranty-  
 4 coverage period, to an Interstate Batteries authorized warranty dealer for a pro-rata-  
 5 warranty adjustment on the price of a Replacement Battery, and who then purchased that  
 6 Replacement Battery from that dealer at an adjusted price on a date from May 19, 2006,  
 7 through April 30, 2012; or

8 (ii) still had, on or before April 30, 2012, an unexpired contractual right under a  
 9 Previous Interstate Batteries' Pro-Rata Warranty to purchase a Replacement Battery in a  
 10 pro-rata-warranty-adjustment transaction if their original battery fails under the terms of  
 11 the Previous Interstate Batteries' Pro-Rata Warranty.

12 Excluded from the class definition are Interstate Battery System of America, Inc., and  
 13 Interstate Battery System International, Inc.; affiliates, parents, or subsidiaries of  
 14 Settling Defendants; entities in which Settling Defendants have a controlling interest;  
 15 predecessors, successors, or assigns of Settling Defendants; any judges who preside over  
 16 this Litigation before Final Judgment, their spouses, the members of their staffs, and  
 17 anyone within the third degree of relationship from the judges or their spouses, as well  
 18 as those persons' spouses; and persons employed by Class Counsel.

19 2. The Court confirms that the Parties have agreed that the Amended Settlement  
 20 Agreement supersedes the Original Settlement Agreement signed as of October 26, 2011.

21 3. The Court reconfirms the appointment of Plaintiff Deno Milano to serve as Class  
 22 Representative for the new Settlement Class as defined in the Amended Settlement Agreement.

23 4. The Court reconfirms the appointment of Girard Gibbs LLP to serve as Class Counsel  
 24 for the new Settlement Class as defined in the Amended Settlement Agreement.

25 5. The Court finds that, for the purpose of settlement only, the requirements of Rule 23 of  
 26 the Federal Rules of Civil Procedure are met. Joinder of all members of the Settlement Class in a  
 27 single proceeding would be impractical, if not impossible, because of their numbers and dispersion.  
 28 Common issues exist among Settlement Class Members; in particular, each Settlement Class Member's  
 claims depend on whether or not the method Interstate Batteries uses to calculate the adjusted price of a  
 Replacement Battery is either (i) contrary to the Previous Interstate Batteries' Pro-Rata Warranty, or (ii)  
 misleading to a reasonable consumer. Named Plaintiff's claims are typical of those of the Settlement  
 Class, as Named Plaintiff and Settlement Class Members have the same alleged injury, which allegedly  
 arises from Interstate Batteries' common policies and practices with regard to the Previous Interstate

Batteries' Pro-Rata Warranty. Named Plaintiff and class counsel will fairly and adequately protect the interests of the Settlement Class; Named Plaintiff has no interests antagonistic to those of the Settlement Class and has retained counsel experienced and competent to prosecute this matter on behalf of the Settlement Class. Finally, the Settlement Class may be certified under Rule 23(b)(2), as Defendants have acted on grounds that apply generally to the Settlement Class, such that the final injunctive relief proposed by the Amended Settlement Agreement is appropriate respecting the Settlement Class as a whole.

6. The Court preliminarily approves the proposed Amended Settlement Agreement, finding that it appears to be the product of serious, informed, non-collusive negotiations; has no obvious deficiencies; does not improperly grant preferential treatment to the Named Plaintiff or segments of the Settlement Class; and falls within the range of possible approval.

#### **Dissemination of Class Notice**

7. The Court hereby approves the form, content, and procedure for disseminating notice of the proposed settlement to the Settlement Class set forth in the Amended Settlement Agreement, finding that it is appropriate under Federal Rule of Civil Procedure 23(c)(2)(A). The Court finds that the Notice Plan proposed by the Parties is reasonably calculated to apprise interested parties of the proposed settlement and afford them an opportunity to present any objections. The Court also finds that the Notice Plan satisfies the requirements of Federal Rule of Civil Procedure 23(e)(1).

8. The Court reconfirms the appointment of Jennifer Keough and Garden City Group Inc. as the Settlement Administrator for the proposed settlement contained in the Amended Settlement Agreement, who along with the Parties, will be responsible for implementing the Notice Plan under the Amended Settlement Agreement, as follows:

9. New CAFA Notice: If it has not already done so, the Settlement Administrator shall serve notice of the settlement, substantially in the form attached as Exhibit A to the Amended Settlement Agreement, on the federal and state officials specified in 28 U.S.C. § 1715, not later than 10 days after the entry of this Preliminary Approval Order.

10. Class Settlement Website: The Settlement Administrator shall continue to operate and maintain the Class Settlement Website activated pursuant to this Court's order dated December 1, 2011.

1 Within 15 days after entry of this Order, the Settlement Administrator shall update the Class Settlement  
 2 Website to contain the information specified in the Amended Settlement Agreement, including  
 3 settlement documents such as the Amended Settlement Agreement, the Exhibits to the Amended  
 4 Settlement Agreement, the New Long-Form Settlement Notice, this Preliminary Approval Order, and  
 5 Class Counsel's application for attorneys' fees, costs, and other expenses. The Settlement  
 6 Administrator shall maintain the Class Settlement Website at least until either (i) December 31, 2020,  
 7 or (ii) the date on which the settlement is terminated or otherwise not approved by a court. The  
 8 Settlement Administrator may modify and tailor the Class Settlement Website with information  
 9 relevant to the applicable circumstances in a particular year.

10 11. Sponsored Hyperlinks: After this Preliminary Approval Order is entered, the Settlement  
 11 Administrator shall take steps to attract Settlement Class Members to the Class Settlement Website by  
 12 obtaining keyword/phrase sponsorships—such as “Interstate prorated,” “Interstate warranty discount,”  
 13 and/or “Interstate settlement”—from Google and Yahoo!. This keyword/phrase sponsorship will  
 14 provide a hyperlink to the Class Settlement Website and will run for a period of 6 weeks sometime  
 15 between the date this Preliminary Approval Order is entered and May 11, 2012. The Settlement  
 16 Administrator will obtain additional agreed-upon keyword/phrase sponsorships for a two-week period  
 17 in both March and September of each year of 2013 through 2019.

18 12. Interstate Batteries' Website: Settling Defendants shall continue to post on  
 19 www.interstatebatteries.com a hyperlink to the Class Settlement Website as specified in the Amended  
 20 Settlement Agreement, which hyperlink shall remain active until either (i) December 31, 2020, or (ii)  
 21 the date on which the settlement is terminated or otherwise not approved by a court.

22 13. Print and Radio Media: Within 30 days of entry of this Preliminary Approval Order, the  
 23 Settlement Administrator will disseminate new press and audio news releases announcing the amended  
 24 settlement and referencing the Class Settlement Website to print and radio media in the United States  
 25 and the District of Columbia, as set forth in the Amended Settlement Agreement.

26 14. Handout to Authorized Dealers: Within 30 days of entry of this Preliminary Approval  
 27 Order, Interstate Batteries will post a new 8½ by 11 inch handout, substantially in the form attached as  
 28 Exhibit C to the Amended Settlement Agreement, with accompanying instructions, in the electronic

Memo Binder and request its distributors to print the handout and have the distributors' route men and women deliver the handouts to Interstate Batteries authorized warranty dealers (in the United States and the District of Columbia) within the distributors' territories. As specified in the Amended Settlement Agreement, Interstate Batteries shall continue to post the handout in the Memo Binder until December 31, 2019, and will remind Interstate Batteries authorized warranty dealers about the Interstate Batteries Settlement Program in each year from 2013 through 2019. Interstate Batteries shall have the right to make periodic, non-material modifications and changes to the handout, subject to approval by Class Counsel, which shall not be unreasonably withheld.

15. The instructions with the handout will request Interstate Batteries authorized warranty dealers to have the handout available in their stores until at least December 31, 2019, and to provide the handouts to anyone who asks about the Interstate Batteries class action settlement, expresses concern about their pro-rata warranty, or returns a failed original battery and wants to obtain a new Replacement Battery under the Previous Interstate Batteries' Pro-Rata Warranty.

16. Direct Notice: Within 60 days of entry of this Preliminary Approval Order, Interstate Batteries will attempt to provide the New Long-Form Settlement Notice to each customer who has complained to Interstate Batteries at any time from May 19, 2006 through April 30, 2012 about the Previous Interstate Batteries' Pro-Rata Warranty, in order to inform those customers about this proposed amended settlement. Interstate Batteries will attempt to contact these customers either by telephone or by mailing or e-mailing a hyperlink of the New Long-Form Settlement Notice to the customer. Interstate Batteries need only attempt to contact those customers whose complaints are known to Interstate Batteries' Customer Service Department, when Interstate Batteries still has valid contact information for those customers. Interstate Batteries will also mail a copy, or e-mail a hyperlink, of the New Long-Form Settlement Notice to all Settlement Class Members who filed a claim under the Interstate Batteries Settlement Program before April 30, 2012.

17. Cost of Notice: As set forth in the Amended Settlement Agreement, Settling Defendants shall be responsible for the costs of all components of the Notice Plan. The Named Plaintiff, Class Counsel, and the Settlement Class Members are not responsible for any portion of the costs of the Notice Plan.

**Fairness Hearing and Fee Application**

18. A hearing on entry of final approval of the Amended Settlement Agreement, an award of fees and expenses to Class Counsel, and an Incentive Award to the Named Plaintiff (the “Fairness Hearing”) shall be held at 2:00 p.m. on June 28, 2012, in Courtroom 2, Oakland Courthouse, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612. At the Fairness Hearing, the Court will consider: (i) whether the Amended Settlement Agreement should be finally approved as fair, reasonable, and adequate for the Settlement Class; (ii) whether a judgment granting final approval of the proposed Amended Settlement Agreement and dismissing the lawsuit with prejudice should be entered; and (iii) whether Named Plaintiff’s application for an award of attorneys’ fees and expenses to Class Counsel and an Incentive Award to the Named Plaintiff (“Fee Application”) should be granted.

19. Counsel for the respective Parties shall file memoranda, declarations, or other statements and materials in support of the request for final approval of the parties’ settlement no later than May 04, 2012.

20. Class Counsel shall file its Fee Application no later than April 13, 2012.

21. To validly object to the Amended Settlement Agreement or the Fee Application, an objecting Settlement Class Member must send a letter saying that he or she objects to *Milano v. Interstate Battery System of America Inc.* and provide the following information in his or her written objection: (i) the objecting Settlement Class Member’s name, address, telephone number, and signature; (ii) each of the Settlement Class Member’s specific objections to the Amended Settlement Agreement and/or the Fee Application; (iii) the reasons for each such objection; and (iv) a list of any other class action settlements that the Settlement Class Member has objected to during the past five years. The objection must also state if either the Settlement Class Member or his attorney intends to appear at the Final Approval Hearing. Any objection to the Amended Settlement Agreement and/or the Fee Application must be postmarked no later than May 18, 2012, and mailed to the Settlement Administrator at the following address: *Milano v. Interstate Battery System of America* c/o GCG, Inc. P.O. Box 9782, Dublin, OH 43017-5682.



22. The filing of an objection allows Class Counsel or counsel for Settling Defendants to notice the deposition of the objector at an agreed-upon location, and also to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objecting Settlement Class Member to make himself or herself available for a deposition or to comply with expedited discovery requests may result in the Court striking the Settlement Class Member's objection and otherwise denying that Settlement Class Member the opportunity to make an objection or be further heard. The Court reserves the right to tax the costs of any such discovery to the objecting Settlement Class Member or the objecting Settlement Class Member's separate counsel should the Court determine that the objection is frivolous or is made for an improper purpose.

23. If any objecting Settlement Class Member wants to appear, in person or by counsel, at the Fairness Hearing to object to the Final Approval of the Amended Settlement Agreement or the Fee Application, such objector must mail a Notice of Intention to Appear. The Notice of Intention to Appear must include the Settlement Class Member's name, address, telephone number, signature, and a statement of all issues the Settlement Class Member wishes to address at the hearing, and whether the Settlement Class member or his or her attorney wants to speak at the hearing. Any Notice of Intention to Appear must be postmarked no later than May 18, 2012, and mailed to the Settlement Administrator at the address listed above in paragraph 21 of this Order.

24. The procedures and requirements for filing objections in connection with the Fairness Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objection to the Amended Settlement Agreement, in accordance with the due process rights of all Settlement Class Members.

25. No later than June 07, 2012, the Parties shall file any reply papers in support of final approval of the Amended Settlement Agreement or the Fee Application and in response to any objections from Settlement Class Members.

26. The Court reserves the right to adjourn or continue the date of the Fairness Hearing and related prior deadlines set forth above. In that event, the revised hearing date or deadlines shall be posted on the Class Settlement Website and the Parties shall not be required to re-send or re-publish class notice.



1           27. Pending the Fairness Hearing, all proceedings in this action, other than proceedings  
2 necessary to carry out or enforce the terms and conditions of the Amended Settlement Agreement and  
3 this Order, are stayed.

4           28. This Order supersedes entirely the Court's earlier Order Granting Preliminary Approval  
5 of Class Settlement dated December 1, 2011.

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8           IT IS SO ORDERED.

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10          Dated: 3/8/2012

  
Judge Claudia Wilken  
United States District Judge